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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 DONALD A., JR.,

12 Plaintiff,

13 v.

14 COMMISSIONER OF SOCIAL
15 SECURITY,

16 Defendant.

17 CASE NO. 2:23-CV-361-DWC

18 ORDER REVERSING AND
19 REMANDING DEFENDANT'S
20 DECISION TO DENY BENEFITS

21 Plaintiff filed this action under 42 U.S.C. § 405(g) for judicial review of Defendant's
22 denial of his application for supplemental security income benefits ("SSI").¹ After considering
23 the record, the Court concludes the Administrative Law Judge ("ALJ") erred when she failed to
24 provide legally sufficient reasons for finding the opinions of Drs. Tasmyn Bowes, Psy.D., and
Sonja Olson, M.D., unpersuasive. Had the ALJ properly considered these opinions, Plaintiff's
residual functional capacity ("RFC") may have included additional limitations. The ALJ's errors

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1 are, therefore, not harmless, and this matter is reversed and remanded pursuant to sentence four
 2 of 42 U.S.C. § 405(g) to the Commissioner of Social Security (“Commissioner”) for further
 3 proceedings consistent with this Order.

4 **I. Factual and Procedural History**

5 Plaintiff filed an application for SSI on August 20, 2019, alleging disability beginning
 6 August 20, 2019. Dkt. 7, Administrative Record (“AR”) 71. After his application was denied at
 7 the initial level and on reconsideration, Plaintiff requested a hearing before an ALJ. AR 102,
 8 107, 112. Plaintiff was represented by counsel at the hearing, which took place telephonically on
 9 January 10, 2022. AR 46–47. The ALJ issued an unfavorable decision on February 10, 2022, and
 10 the Appeals Council denied Plaintiff’s request for review. AR 1, 12. Plaintiff then appealed to
 11 this Court. Dkt. 5.

12 **II. Standard of Review**

13 When reviewing the Commissioner’s final decision under 42 U.S.C. § 405(g), this Court
 14 may set aside the denial of social security benefits if the ALJ’s findings are based on legal error
 15 or are not supported by substantial evidence in the record. *Bayliss v. Barnhart*, 427 F.3d 1211,
 16 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)). Substantial
 17 evidence “is a highly deferential standard of review.” *Valentine v. Comm’r of Soc. Sec. Admin.*,
 18 574 F.3d 685, 690 (9th Cir. 2009). Evidence is “substantial” when it is “more than a mere
 19 scintilla.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1153 (2019). “It means—and means only—‘such
 20 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” *Id.*
 21 (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)).

22 “[T]he ALJ ‘is responsible for determining credibility, resolving conflicts in medical
 23 testimony, and for resolving ambiguities.’” *Ford v. Saul*, 950 F.3d 1141, 1149 (9th Cir. 2020)
 24

1 (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)). Accordingly, “[e]ven if the
 2 evidence is ‘susceptible to more than one rational interpretation, it is the ALJ’s conclusion that
 3 must be upheld.’” *Farlow v. Kijakazi*, 53 F.4th 485, 488 (9th Cir. 2022) (quoting *Burch v.*
 4 *Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)). However, ALJs must “set forth the reasoning
 5 behind [their] decisions in a way that allows for meaningful review.” *Brown-Hunter v. Colvin*,
 6 806 F.3d 487, 492 (9th Cir. 2015). “A clear statement of the agency’s reasoning is necessary
 7 because [the Court] can affirm the agency’s decision to deny benefits only on the grounds
 8 invoked by the agency.” *Id.*

9 “[H]armless error principles apply in the Social Security Act context.” *Molina v. Astrue*,

10 674 F.3d 1104, 1115 (9th Cir. 2012), *superseded on other grounds by* 20 C.F.R. § 404.1502(a).
 11 Generally, an error is harmless if it is not prejudicial to the claimant and is “inconsequential to
 12 the ultimate nondisability determination.” *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050,
 13 1055 (9th Cir. 2006); *see also Molina*, 674 F.3d at 1115.

14 III. Discussion

15 Plaintiff argues that the ALJ did not properly evaluate certain medical opinions in the
 16 record and failed to support her findings with substantial evidence. *See* Dkt. 9.

17 A. Medical Opinion Evidence Standard

18 The regulations regarding the evaluation of medical opinion evidence have been amended
 19 for claims filed on or after March 27, 2017. *See* Revisions to Rules Regarding the Evaluation of
 20 Medical Evidence, 82 Fed. Reg. 5844, 5867–68, 5878–79 (Jan. 18, 2017). Because Plaintiff filed
 21 his claim after that date, the new regulations apply. *See* 20 C.F.R. §§ 404.1520c, 416.920c.
 22 Under the revised regulations, ALJs “will not defer or give any specific evidentiary weight,
 23 including controlling weight, to any medical opinion(s) or prior administrative medical

1 finding(s). . . ." *Id.* §§ 404.1520c(a), 416.920c(a). Instead, ALJs must consider every medical
 2 opinion or prior administrative medical finding in the record and evaluate the persuasiveness of
 3 each one using specific factors. *Id.* §§ 404.1520c(a), 416.920c(a).

4 The two most important factors affecting an ALJ's determination of persuasiveness are
 5 the "supportability" and "consistency" of each opinion. *Id.* §§ 404.1520c(a), 416.920c(a).
 6 "Supportability means the extent to which a medical source supports the medical opinion by
 7 explaining the 'relevant . . . objective medical evidence.'" *Woods v. Kijakazi*, 32 F.4th 785, 791–
 8 92 (9th Cir. 2022) (quoting 20 C.F.R. § 404.1520c(c)(1)); *see also* 20 C.F.R. § 416.920c(c)(1).
 9 An opinion is more "supportable," and thus more persuasive, when the source provides more
 10 relevant "objective medical evidence and supporting explanations" for their opinion. 20 C.F.R.
 11 §§ 404.1520c(c)(1), 416.920c(c)(1). "Consistency means the extent to which a medical opinion
 12 is 'consistent . . . with the evidence from other medical sources and nonmedical sources in the
 13 claim.'" *Woods*, 32 F.4th 785 at 792 (quoting 20 C.F.R. § 404.1520c(c)(2)); *see also* 20 C.F.R. §
 14 416.920c(c)(2). ALJs must articulate "how [they] considered the supportability and consistency
 15 factors for a medical source's medical opinions" when making their decision. 20 C.F.R. §§
 16 404.1520c(b)(2), 416.920c(b)(2).

17 B. *Analysis*

18 The ALJ found that Plaintiff had the RFC to perform medium work except that he can
 19 have no exposure to hazards such as heights, dangerous machinery, and commercial driving; he
 20 can perform simple, routine tasks in a low stress environment (defined as no fast pace, no
 21 mechanized pace for producing product, no strict quotas, no strict production standards for time
 22 or quantity, and no frequent duty changes); he can engage in superficial interpersonal
 23 interactions with coworkers and supervisors (defined as no arbitration, negotiation, or
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1 confrontation, but can ask questions, clarify instructions, gather information, and point or direct
2 to where items may be placed); and he can have no interaction with the public as a job
3 requirement. AR 20.

4 In determining Plaintiff's RFC, the ALJ considered the medical opinions of a state
5 agency physician, Norman Staley, M.D., and of Plaintiff's treating physician, Sonja Olson, M.D.,
6 on Plaintiff's physical limitations. AR 25–28. Regarding his mental limitations, the ALJ
7 considered the opinions of two state agency psychologists, Rita Flanagan, Ph.D., and Jon
8 Anderson, Ph.D.; consultative psychological examiner April DeLira, M.D.; examining
9 psychologist Tasmyn Bowes, Psy.D.; and Dr. Olson. AR 25–29. Plaintiff argues that the ALJ
10 improperly rejected the opinions of Drs. Bowes and Olson. Dkt. 9.

11 1. Tasmyn Bowes, Psy.D.

12 On October 29, 2019, Dr. Tasmyn Bowes performed a psychological evaluation of
13 Plaintiff at the request of the Washington State Department of Social and Health Services. AR
14 723. She noted that Plaintiff presented as very oppositional, avoidant, and irritable during the
15 evaluation. AR 724. His mental health symptoms included ongoing depressive symptoms,
16 anxiety, difficulties with concentration, paranoia, and a “[p]ervasive history of criminal
17 behavior—disregard for the rights of others, unstable moods and relationships, difficulty with
18 authority figures, impulsive decision making, emotional outbursts, [and] poorly controlled
19 anger.” AR 725. Dr. Bowes diagnosed Plaintiff with post-traumatic stress disorder (“PTSD”),
20 antisocial personality disorder, and alcohol disorder in reported sustained full remission. *Id.*

21 Although Dr. Bowes found only mild or moderate limitations in most categories of basic
22 work activities, she found severe impairments in Plaintiff's ability to communicate, perform
23 effectively, and maintain appropriate behavior in a work setting, and to complete a normal
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1 workday and work week without interruptions from psychologically based symptoms. AR 726.
 2 She felt that these limitations were not primarily due to a substance use disorder. *Id.* She also
 3 noted that Plaintiff had a long history of aggressive behavior and that his personality disorder
 4 was not likely to respond to treatment. *Id.*

5 In the ALJ's written decision, she found Dr. Bowes' opinion to be "partially persuasive."
 6 AR 27. The ALJ stated that "parts of the opinion support a finding that the claimant had no more
 7 than moderate limitations in some areas of basic work activity[.]" *Id.* However, she found that
 8 "the part of the opinion that the claimant had severe limitations" was not consistent with
 9 Plaintiff's "more recent reports in the record" or "other mental status findings" including:

10 being alert, polite, pleasant, engaged, and/or cooperative, logical and connected
 11 thoughts, fair hygiene or a well-groomed appearance, pleasant affect, logical and/or
 12 connected speech or clear speech, memory within normal limits, thought content
 13 without hallucinations, euthymic or normal mood, adequate eye contact, normal
 14 behavior, fair or normal judgment, fair insight, normal thought content, and [being]
 15 adequately dressed for the weather.

16 *Id.* The ALJ then noted that Dr. Bowes' opinion was "somewhat consistent" with Plaintiff's
 17 testimony and the opinions of Drs. DeLira and Olson but was not consistent with the opinions of
 18 the state agency psychologists. *Id.*

19 Plaintiff first argues that the ALJ did not adequately explain "how the limitations which
 20 she appeared to adopt were supported." Dkt. 9 at 4. After writing that Dr. Bowes' opinion was
 21 "partially persuasive," the ALJ's only reference to the piece of the opinion that she found
 22 persuasive was the comment that "parts of [Dr. Bowes'] opinion support a finding that the
 23 claimant had no more than moderate limitations in some areas of basic work activity[.]" AR 27.
 24 This circular statement does nothing to explain why the ALJ found this portion of the opinion
 25 persuasive.

1 Next, Plaintiff challenges the ALJ's conclusion that Dr. Bowes' endorsement of severe
 2 limitations was inconsistent with "other mental status findings" and "more recent reports in the
 3 record."² Dkt. 9 at 5–6. Plaintiff contends that the ALJ's finding of inconsistency is not
 4 supported by sufficient evidence and "reflects an improper 'cherry picking' of the record." *Id.* In
 5 her written decision, the ALJ includes citations to numerous reports in the record in support of
 6 this inconsistency finding. AR 27. The cited records include a mix of normal and abnormal
 7 mental status findings, including encounters that took place after Dr. Bowes' evaluation. *See,*
 8 *e.g.*, AR 747 (poor insight into mental illness, thought process abnormalities, impaired attention,
 9 labile mood), 808 (reports of poor sleep, seeing and hearing things, horrible nightmares), 824–25
 10 (logical and connected speech, euthymic mood, reports of poor sleep due to nightmares), 841–42
 11 (dressed appropriately for the weather, fair hygiene, euthymic mood, somewhat disorganized
 12 thought process, reports of "headaches and seeing weird people"). The Commissioner argues that
 13 the abnormal mental status findings do not undermine the ALJ's conclusions because "[t]he
 14 question is not whether Plaintiff had psychological impairments or symptoms, but the degree to
 15 which they limit him." Dkt. 12 at 4.

16 Here, it is not clear how the mixed evidence in the record led the ALJ to accept some of
 17 Dr. Bowes' findings and reject others. Although the ALJ is responsible for resolving conflicts
 18 and ambiguities in medical evidence, the concurrent duty to set forth her reasoning in a way that
 19 allows for meaningful review requires building an "accurate and logical bridge from the
 20 evidence to [the ALJ's] conclusions." *Michael D. v. Comm'r of Soc. Sec.*, No. 2:22-CV-464-

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23 ² Although the ALJ's decision states that the severe limitations were not "supported by the claimant's more
 24 recent reports in the record discussed above or by other mental status findings," the comparison of Dr. Bowes'
 opinion to other medical sources in the record goes to the consistency factor, not supportability. *See Woods*, 32 F.4th
 785 at 791–92.

1 DWC, 2022 WL 4377400, at *3 (W.D. Wash. Sept. 22, 2022) (quoting *Blakes v. Barnhart*, 331
 2 F.3d 565, 569 (7th Cir. 2003)).

3 Finally, Plaintiff argues that the ALJ's comment evaluating the consistency of Dr.
 4 Bowes' opinion with the other medical opinions in the record and with Plaintiff's testimony,
 5 though it "facially complied" with the requirement to articulate the ALJ's assessment of the
 6 consistency factor, failed to explain how this factor affected the persuasiveness of Dr. Bowes'
 7 opinion. Dkt. 9 at 8. Defendant responds that "the ALJ merely discussed the consistency of Dr.
 8 Bowes's opinion with others; the ALJ did not state that she was discounting Dr. Bowes's opinion
 9 as a result of that inconsistency. Instead, the ALJ simply acknowledged the degree to which the
 10 opinion was and was not inconsistent with others in the record." Dkt. 12 at 5.

11 The Commissioner has precisely identified the problem: it is not enough to simply state
 12 that an opinion is consistent or inconsistent with another opinion. *See Garrison v. Colvin*, 759
 13 F.3d 995, 1012–13 (9th Cir. 2014) ("[A]n ALJ errs when he rejects a medical opinion . . . while
 14 doing nothing more than ignoring it, asserting without explanation that another medical opinion
 15 is more persuasive, or criticizing it with boilerplate language that fails to offer a substantive basis
 16 for his conclusion."). Rather, the ALJ must "resolv[e] conflicts in medical testimony." *Ford*, 950
 17 F.3d at 1149. This bare statement of comparison does not clarify the persuasiveness of Dr.
 18 Bowes' opinion.

19 In sum, the Court concludes that the ALJ's failure to articulate how she considered the
 20 supportability of Dr. Bowes' opinions and her reasoning for choosing to credit some sources
 21 over others does not comply with the standards set forth in the new regulations. *See* 20 C.F.R. §§
 22 404.1520c(b)(2), 416.920c(b)(2). Accordingly, the ALJ erred. This error was not harmless
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1 because, had the ALJ been persuaded by Dr. Bowes' finding of severe limitations, the RFC may
 2 have included additional limitations regarding Plaintiff's capabilities in a work setting.

3 2. Sonja Olson, M.D.

4 *a. Mental Assessment*

5 On December 22, 2021, Dr. Sonja Olson completed an assessment of Plaintiff's mental
 6 RFC. AR 879–80. At that time, Dr. Olson had been Plaintiff's primary care provider for over
 7 five years. AR 874. She found severe limitations in Plaintiff's ability to: maintain attention and
 8 concentration for at least two straight hours with at least four such sessions in a workday, work
 9 in coordination with or proximity to others without being distracted, complete a normal workday
 10 and work week without interruptions from psychologically based symptoms and perform at a
 11 consistent pace without unreasonable number and length of interruptions, interact appropriately
 12 with the general public or customers, accept instructions and respond appropriately to criticism
 13 from supervisors, and get along with co-workers or peers without distracting them or exhibiting
 14 behavioral extremes. AR 879–80. Dr. Olson also opined that there were marked limitations in
 15 Plaintiff's ability to understand, remember, and carry out detailed instructions that may or may
 16 not be repetitive; ask simple questions or request assistance from supervisors; respond
 17 appropriately to expected or unexpected changes to work setting and routine; and travel in
 18 unfamiliar settings and use public transportation. *Id.*

19 The ALJ wrote that she found Dr. Olson's opinion "not persuasive as she offered mental
 20 limitation which appeared to be outside of her specialist a family doctor [sic]." AR 28–29. The
 21 ALJ also noted, using identical language and citations as in her assessment of Dr. Bowes'
 22 opinion, that the opinion was not consistent with Plaintiff's more recent reports in the record or
 23 other mental status findings. AR 27, 29. The ALJ wrote that Dr. Olson's opinion was "somewhat

1 "consistent" with Plaintiff's testimony, the opinions of Drs. DeLira and Bowes, and Dr. Olson's
 2 separate opinion on Plaintiff's physical limitations but was not consistent with the opinions of
 3 the state agency psychologists. AR 29.

4 Plaintiff argues that, although the regulations include specialization as one factor to
 5 consider when determining the persuasiveness of an opinion, medical providers are not restricted
 6 to giving opinions only in their areas of specialty. Dkt. 9 at 12. The new regulations provide that
 7 the opinion of "a medical source who has received advanced education and training to become a
 8 specialist may be more persuasive about medical issues related to his or her area of specialty"
 9 than that of a source who is not a specialist in this area. 20 C.F.R. §§ 404.1520c(c)(4), 416.920
 10 c(c)(4). ALJs may, but are not required to, explain how they considered the source's
 11 specialization when articulating the persuasiveness of an opinion. *Id.* §§ 404.1520c(b)(2),
 12 416.920 c(b)(2). Although a medical source's specialization is a relevant factor to the
 13 persuasiveness of their opinion, the supportability and consistency of the opinion remain the
 14 most important factors for the ALJ to consider, as well as the factors they must explain in their
 15 decision. *Id.* §§ 404.1520c(b)(2), 416.920 c(b)(2).

16 Here, it is not clear whether, as Plaintiff argues, the ALJ rejected Dr. Olson's opinion on
 17 Plaintiff's mental limitations solely because she was not a specialist in this area. But this reveals
 18 the underlying problem with the ALJ's treatment of this opinion: the ALJ did not set forth clear
 19 reasoning for rejecting it. As explained above, the ALJ's citations to mixed evidence in the
 20 record and bare comparison to other opinions in the record, without clarifying the effect on
 21 persuasiveness, do not provide an adequate explanation of the ALJ's reasoning. Again, this error
 22 was not harmless because, had the ALJ found Dr. Olson's opinion persuasive, the RFC may have
 23 included additional limitations regarding Plaintiff's capabilities in a work setting.

b. Physical Assessment

2 Dr. Olson also completed an assessment of Plaintiff's physical ability to perform work-
3 related activities on December 22, 2021. AR 874. Dr. Olson opined that Plaintiff was not capable
4 of performing even sedentary work and was unable to lift ten pounds or less due to a Bankart
5 lesion in his left shoulder, right rotator cuff tear, and postural dizziness. *Id.* Dr. Olson noted
6 restrictions in the type of environment in which Plaintiff could work because of his fear of
7 heights and because "sounds trigger PTSD." AR 877. She stated that she would expect Plaintiff
8 to miss work more than twice a month due to his physical health conditions. *Id.* Dr. Olson opined
9 that she did not think Plaintiff could work at all due to his PTSD and shoulder condition, "even
10 with pacing [and] breaks at this point." *Id.*

11 The ALJ found Dr. Olson's assessment "not persuasive." AR 28. She stated that Dr.
12 Olson's "opinions were not well supported and failed to provide any specific reference to
13 treatment records for dates of events, injuries, and objective findings or imaging." *Id.* The ALJ
14 noted that Dr. Olson had "justified the physical limitations with notations of a shoulder
15 dysfunction due to rotator cuff without additional details." *Id.* The ALJ wrote that Dr. Olson's
16 opinion was conclusory and provided a legal decision reserved to the Commissioner. *Id.* The
17 ALJ also noted that Dr. Olson's opinion was not consistent with the opinions of the state agency
18 physicians or psychologists but was "somewhat consistent" with Plaintiff's testimony, the
19 opinions of Drs. DeLira and Bowes, and Dr. Olson's separate opinion regarding Plaintiff's
20 mental RFC. *Id.*

21 Although the ALJ specifically addressed the supportability of Dr. Olson's opinion on
22 Plaintiff's physical limitations, she once again failed to articulate the effect of the consistency
23 with other evidence on the opinion's persuasiveness. Again, this error was not harmless because,

1 had the ALJ found Dr. Olson's opinion persuasive, the RFC may have included additional
2 limitations regarding Plaintiff's physical capabilities.

3 **IV. Conclusion**

4 Based on the foregoing reasons, the Court hereby finds the ALJ improperly concluded
5 Plaintiff was not disabled. Accordingly, the Commissioner's decision to deny benefits is reversed
6 and this matter is remanded for further administrative proceedings in accordance with the
7 findings contained herein.

8 Dated this 30th day of October, 2023.

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12 David W. Christel
13 Chief United States Magistrate Judge
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